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DOI: https://doi.org/10.59444/2024MONredBis_SER_AILr8

The European Dimension of the Ukrainian Constitution

Introduction

Nowadays, the intensification of the processes of European and Euro-Atlantic integration of Ukraine sets a number of tasks in social, economic and political spheres for the authorities and institutions of civil society. In political and legal discourse, the discussion on the acquisition (achievement) of European standards by Ukraine for deepening the integration processes with the European Union and European regional institutes of multilateral sectoral cooperation is not ceased. Hence, the urgent issue is Europeanity of public authorities functioning, governance and local self-government, as well as democratic values in the activities of institutions of civil society.

Therefore, the affiliation of Ukrainian statehood to the European civilization is repeatedly raised by the questioning of some of the political authorities in Ukraine (mainly opponents of the European choice) and representatives of the academic community who are debating the issue of belonging of the Ukrainian legislation to the European or Eurasian traditions. At the same time, this concerns both the domestic and foreign policy context of the Ukrainian statehood establishment and the adaptation of Ukrainian legislation to the principles of the European lawmaking process. This determines the relevance of problem consideration of conformity of the provisions and principles of Ukrainian state formation with European civilizational features, and the conformity of the processes of creation and approval of Ukrainian statehood with the European system of values and standards.

Ukrainian Identity “between Europe and Asia”

Considering the historical gravity of the processes of Ukrainian state-building in the context of the pan-European historical continuum, one should start from the thesis about Ukraine as a part of the European civilization. At the same time, such a combination was observed throughout the hundred-year history of Ukraine. Speaking about the geopolitical importance of Ukrainian lands from a geographical or civilizational point of view, it is worth noting that there is a lively debate in the scientific discourse about Ukraine's membership in the European community. It is indicated by the topic of scientific publications of Ukrainian and foreign researchers. Since the nineteenth century, the Ukrainian socio-political movement has been discussing the problems of European identity of Ukrainians. In particular, the representative of the public movement, Mykhaylo Drahomanov, rightly proved the inseparability of the “Ukrainian issue” solution with the pan-European processes on the European continent, that is, the necessity of Ukraine's connection with Western Europe. In his writings, Mykhaylo Drahomanov repeatedly points to the need to resolve the Ukrainian issue as important for the peoples of Eastern Europe through the realization of the nation's right to self-determination. In doing so, they “can only be realized at willing of the whole Eastern Europe from Austria to Siberia. ... work for the Eastern European nationalities”¹. At the same time, the controversy over Ukraine's accessories in one or another civilizational space continued among domestic scientists. For example, according to Stepan Rudnytsky, the phenomenon of Ukraine lies in its geographical location at the “intersection of three worlds – European, Oriental-Islamic and nomadic Asian..., which transforms Ukraine from a border country into a ‘country of borders’”². Instead, the well-known Ukrainian public-political figure and scholar Vyacheslav Lypynsky believed that:

Ukraine was a territory between East and West [...] its dual image was embedded in its history – from the oscillations between Rome and Byzantium in the choice of Christian rite and ending with various opinions and cultural aspirations towards Poland and Moscow: two different cultures, worldviews, concepts and civilizations³.

The author outlined his vision three years later in his *Letters to Brethren Breeders*, where, considering the geographical position of Ukraine as the cause of Ukraine's

¹ М. Драгоманов, *Українські громадівці перед польським соціалізмом і польським патріотизмом*. – Вибрані 44 твори. – К., 1991. – Т. 1. – 594 с. – С. 217.

² С. Рудницький, *Українська справа зі становища політичної географії* [in:] Чому ми хочемо самостійної України? – С. 116.

³ В. Липинський, *Релігія і Церква в історії України*. – Філадельфія, 1925., (перевидання) Київ, 1993. – С. 64.

statelessness, he puts its geographical location “on a broken path between Asia and Europe, ... a geographically unstable border of cultures: Byzantine and Roman”⁴ on the first place. Thus, such an active controversy was due to the fact that “Europe is now placed squarely before the main theme of world history – the union of East and West”⁵. On the other hand, the creation of new independent nation-states on the wreckage of the Habsburg Empire and in the western outskirts of the Russian Empire triggered the outbreak of decompensation myths among the so-called “non-state nations” of the European East – and those fortunate who gained independence, and those who failed. The need for self-affirmation was realized, among other things, in the new modelling of one’s own living space – in contrast to the Western perception of the European East as “uncivilized”, “untrue” Europe⁶.

In view of such discussions, it is difficult to disagree with the author of the study devoted to the consideration of this issue that in such a way, “Ukraine between East and West” transformed into Ukraine, as Dmytro Chyzhevsky said later, a “face to the West”. One can assume that this type of thinking was, on the one hand, a replica of ideas about the “fatal geography of Ukraine”, that is, its unfortunate location on the border with the aggressive nomadic *Steppe*, and on the other – reflected the reaction to the *Eurasian Orient* of that intellectual environment of Lviv, Warsaw and Prague 1930s, to which most Ukrainian emigrants belonged to⁷. After all, with the spread of the idea of the organic “New Europe” belonging (in which they are now!) to “Real Europe”, the concept of “East” was further overgrown with quasi-scientific semantics – ideological, cultural and even spatial. Ukraine as the eastern object of the research and journalistic reflection of the supporters of the idea of Central and Eastern Europe, was in this sense the most vulnerable – not only because of the “Russian pages” of its history, but also because its territory was part of the Soviet Union, that is the Asian symbol. Moreover, the adherents of the “Europeanness” of Ukraine had to oppose the rather popular idea of Ukraine’s belonging as a part of Russia to “Turkic civilization” at that time⁸.

⁴ В. Липинський, *Листи до братів-хліборобів. Про ідею і організацію українського монархізму*. – Відень 1926. – С. 421 (репринтне перевидання: Київ, 1995).

⁵ Н. Бердяев, *Судьба России. Опыты по психологии войны и национальности*. – Москва, 1990. – С. 111.

⁶ L. Wolff, *Inventing Eastern Europe. The Map of Civilization on the Mind of the Enlightenment*, Stanford University Press 1994.

⁷ *Україна між Сходом і Заходом: проекція однієї ідеї* – [Електронний ресурс] – Режим доступу: <http://litopys.org.ua/yakovenko/yak13.htm>

⁸ F. Koneczny, *O wielości cywilizacji*, Kraków 1935; See more: M. Filipowicz, *Wobec Rosji. Studia z dziejów historiografii polskiej od końca XIX wieku po II wojnę światową*, Lublin 2000, pp. 70–76.

Supremacy of Law as Trend of the Ukrainian Constitution

The gravity of the tradition of nationalism distinguishes Ukrainians as a nation among other peoples. The most profound analysis was provided by V. Antonovych in one of his speeches:

The main features of the national origin, for the preservation of which he (the Ukrainians – N.Ya.) waged centuries-old fights and was persistent in his view, which were as the following: equality of everyone before the law, absence of class differences, the conciliar management of Zemsky affairs, freedom of religious conscience, the right to develop and improve their own national principles, the application of electoral principles in government⁹.

This idea took legal form in the Constitution of Pylyp Orlyk, which substantiates not only the historicity of the Ukrainians, their right to freedom and self-determination, but also the democratic foundations of social life. The writing of the Constitution in 1710 as (*Pacta et Constitutiones legum libertatumque exercitus zaporoviensis*) Covenants and the Constitution of Rights and Freedoms of the Zaporozhian Cossacks determined the principles of government in the Ukrainian lands¹⁰. It should be noted that the Constitution not only proclaimed Ukraine as a sovereign and independent state, but also indicated the protecting human rights, both of the Cossack state and of ordinary citizens. Defining the system of power distribution, the Constitution approves the division of powers between different branches of power – legislative, executive and judicial. At the same time, the Supreme Council remained the functions of a parliament. This gives grounds for claiming that parliamentarianism was born on Ukrainian lands at that time, and the state was thus acquiring a republic with inherent institutions and freedoms. Although understanding of the Ukrainians and their history in the Constitution of Pylyp Orlyk is a part of mythological study, as a historical and legal concept it integrates both pre-scientific and scientific historiographical study about the institute and tradition of election. Thus, the Constitution was the foremost document of the Europeans and may have transcended the traditions and approaches to understanding democratic freedoms. Therefore, the tradition of Ukrainian constitutionalism found its continuation in the Constitution of the Ukrainian People's Republic, adopted in April 1918. According to the available materials, the drafting and approval of the text of the Constitution were proceeding at a rather rapid pace. As Dmytro Doroshenko, a contemporary of those events, mentioned, the Constitution “was

⁹ Н. Яковенко, *Вступ до історії. Критика* – К.: Вид-во «Часопис «Критика», 2007. – С. 142-144.

¹⁰ Конституція Пилипа Орлика. – [Електронний ресурс] – Режим доступу: <https://ridna.ua/2016/10/konstytutsiya-pylypa-orlyka-povnyj-tekst/> [access on: 18.12.2023].

adopted virtually unchanged, that is, in the version which it was proposed by the commission”¹¹. Similarly, it reflected the principles of democratic development of the state, the Ukrainians were proclaimed as the bearer of sovereign power. The second part of the Constitution about the protection of the rights of citizens is the main attribute of the state functioning, served as a testimony for the popularization of the population. The UNR Constitution also reflected the commitment of the Ukrainian political elite to traditionally European principles of democracy in trying to build a republican model of government. The National Assembly, the administrative-territorial division with the institutions of local self-government, the executive and judicial power, and the guarantees of the rights of national and cultural autonomy for national minorities, are far from a complete list of the attributes of the constitutional design of the Ukrainian republic. In view of this, one can speak about the development of the Ukrainian constitutional process in the context of pan-European historical trend.

European and national identities are not mutually exclusive, and the constitutional tradition of Ukrainians is a part of the European tradition. For the effective development of democracy in Ukraine, a number of historical issues need to be discussed first. It is only if universal democratic standards and values become the values of the majority of Ukrainian society and the democracy in Ukraine becomes an irresistible reality. At the same time, not only the person should possess the responsibility before the state, but the state should not violate the rights of individuals¹². According to V. Osiatynsky, the most effective restriction of power is the rights of a person that no one can violate, even the most democratic government. Rights are a guarantee of human freedom. In case of violation of the right of freedom guaranteed by the right, the citizen has the right to demand compensation from the state¹³. As O. Radchenko emphasizes, “democracy is not given once and forever. Civil society must constantly be vigilant, defend itself against the state’s encroachment on its interests and fight for control over it, and form the value matrix of a democratic political regime”¹⁴. As I. Prokopchuk rightly points out, “the rooting of democracy in society depends on a large extent on the way in which its principles and mechanisms are

¹¹ Д. Дорошенко, *Історія України 1917 – 1923 рр.* – Т.1: Центральна Рада. – Ужгород, 1932. – С. 331.

¹² See more: І. Панкевич, *Традиція виборності влади в Україні*: монографія. Львів : ЛНУ імені Івана Франка, 2015. – 488 с.

¹³ W. Osiatyński, *Demokracja a prawa człowieka*, [in:] A. Rzepliński, W. Osiatyński (eds.), *Prawa człowieka w społeczeństwie obywatelskim*, Warszawa 1993, p. 39.

¹⁴ О. Радченко, *Компаративний аналіз моделей демократичного політичного режиму держав початку XXI століття* //Публічне управління: теорія та практика: зб. наук. праць – Вип. 1(5). – 2011. – С. 95.

accessible to the intellectual level of a person, how the average voter interprets true democracy”¹⁵. One of the important features of democracy is the ability to reconcile the interests of different populations, taking into account the views of the majority and the minority by reaching a compromise and reaching a joint decision¹⁶. That was the result achieved by the Supreme Council (Verkhovna Rada) of Ukraine during the adoption of the Constitution of Ukraine on June 28, 1996. In the situation of conflict between the President and the Supreme Council of Ukraine in the period preceding the adoption of the current Basic Law was ideological conflict between the Communist majority and the democratic part of the Supreme Council of Ukraine. As a result, deputies had different views not only on the direction of further state development, but also on state symbols¹⁷. In spite of this, it was precisely through reaching a compromise that the Ukrainian Parliament adopted the Constitution of Ukraine and prevented the destabilization of the socio-political situation in the country.

The problem of democracy in Ukraine appeared in a quiet opposite environment from Western European conditions. The fight for democracy in Western Europe has fostered the development of private property and liberal thought, which has resulted in the adoption of such fundamental values as freedom and equality of opportunities. It is also noted about guaranteeing private property as an integral basis of individual freedom, introducing a system of separation of powers, developing the idea of a rule of law, equality of all citizens before the law, tolerance towards minorities. As P. Sarnecki points out, the rule of law is also a state that is ideologically neutral, but not morally neutral, that imposes no philosophical or religious values on anyone¹⁸. In Ukraine, these liberal ideas, especially during the existence of the Russian Empire and later the Soviet Union, did not find widespread recognition and support among intimidated and persecuted citizens¹⁹. The constitutional process in Ukraine is different from the processes in other European post-communist states because, as O. Gubrienko points out, “with the similarity of monopoly totalitarian systems of government, the main difference at the start-up stage of democratic transformations was that

¹⁵ І. Прокопчук, Осмислення демократичних перетворень у сучасному українському суспільстві. Мультиверсум. Філософський альманах: 36. наук. пр. – К., 2008. – Вип. 70. – С. 26.

¹⁶ Г. Еллинек, *Общее учение о государстве* – СПб.: Издание юридического книжного магазина Н. К. Мартынова, 1908. – С. 426-427.

¹⁷ О. Мироненко, *Історія Конституції України* – К.: Ін Юре, 1997. – 60 с.

¹⁸ P. Sarnecki, *Zarys ustroju państwowego Polski*, Kraków 2003, p. 20.

¹⁹ See more: I. Pankevych, *Tendencje w zakresie konstytucyjnej regulacji prawa wyborczego a rozwój demokracji (analiza prawno-porównawcza)*, [in:] J. Jaskiernia, K. Spryszak (eds.), *Dwadzieścia lat obowiązywania Konstytucji RP. Polska myśl konstytucyjna a standardy międzynarodowe*, Toruń 2017, pp. 799-809.

the countries are “people’s democracy”, from the Soviet republics, they were still independent”²⁰.

Therefore, the emergence of democracy in Ukraine is linked to other legal processes, among which the most important is the establishment of the rule of law. O. Skrypnyuk argues with good reason the interdependence of the processes of establishing democracy in Ukraine and ensuring the principle of the rule of law, which “is explained by the fact that the principle of the rule of law can be secured and implemented only in the conditions of democracy, whereas democracy itself becomes a reality (and not a pseudo-reality, as often happens in Ukraine) only if the norm of law is upheld and respected. Moreover, this connection can be justified both from the standpoint of political and legal theory and by resorting to the analysis of the same political and legal practice. It is from the awareness of the specifics of this inextricable link between democracy and the rule of law that the future prospect of not only a purely constitutional but also a social development of Ukraine, the prospect of forming a modern, truly democratic system of government, which underlies not only the effective construction of the system of state power, but also the formation stable system of relations between the state and civil society”²¹.

According to Art. 5 of the Constitution of Ukraine, Ukraine was proclaimed as a republic, determined that “the bearer of sovereignty and the sole source of power in Ukraine are the people. The people exercise power directly and through state and local governments”²². An important element of democracy is the power that promotes the organization of person, people, and society. According to the current approach in Ukraine to the institute of state power, state power has two main monopolies: the issuance of mandatory rules of conduct in the form of legal norms, as well as the ability and real ability to apply state coercion²³. As P. Rabinovych and M. Khavroniuk point out, “the power of the people is exercised first and foremost by issuing laws that are an expression of the universal willing”²⁴. Somewhat differently, power is defined by Western European scholars, where the concept of power as an opportunity to take some action is extended. It is defined as the quality of administration. For the first time, this concept was formulated by the German sociologist Max Weber, who argued that power means the least possibility of introducing one’s own willing within existing relationships, even in

²⁰ О. Губрієнко, *Особливості конституційного розвитку держав Центрально-Східної Європи та Латинської Америки*. Вісник Запорізьк. нац. ун-тету. Юридичні науки. – № 1. – 2009. – С. 47.

²¹ О. Скрипнюк, *Верховенство права і демократія: концептуальні питання взаємозв’язку* // Вісник Академії правових наук України. 2008. – № 2 (53). – С. 23.

²² Конституція України // ВВР України. – 1996. – № 30. – Ст. 141.

²³ О. Скаун, *Теорія держави і права: підруч.* [2-ге вид.] – К. : Алерта; КРТ; ЦУЛ, 2010. – С. 121.

²⁴ П. Рабінович, *Права людини і громадянина : навч. посіб.* – К. : Атіка, 2004. – С. 203.

spite of resistance, regardless of what the opportunity is based on²⁵. The French sociologist A. Birou defines power as the ability to accomplish something, to realize intentions, to have the opportunity to act as it is²⁶. The same opinion is shared by T. Parsons, who defines power as the ability to make decisions that are binding on individual groups and their members insofar as their status corresponds to the responsibilities arising from such a decision²⁷.

Democracy allows all social groups to reconcile their interests and needs. The construction of a democratic state in the modern sense includes:

- the principle of separation of powers;
- the idea of constitutionalism;
- the idea of protection of fundamental civil rights and freedoms;
- the idea of local self-government²⁸.

Such principles of democracy as pluralism, democratic co-operation, the election of power extend the field of political choice and the likelihood of finding the optimal option for the development of society. Moral, political, legal and economic values are the content of democracy as power of people. Dominant value in society is a reflection of people's relevant beliefs. As already was mentioned, based on the analysis of scientific approaches to the problem of democracy, all authors, despite different views, consider the basic principles of democracy as political rights and freedoms, equality before the law, majority power with respect for minority rights, the rule of human rights over the rights of the state. This means that these values have a global, universal meaning for all human civilization. The moral and political values that have gained international recognition are enshrined in the constitutions of all modern states. The evolutionary development of society and the state presupposes the guarantee of basic, universally recognized principles, without which democracy as power of people is impossible. Without these principles, without democratic values, it is impossible to move to a knowledge-based and functioning civilization thanks to wide exchange of information and open access to it. This involves recognizing the need to realize democratic values. Nowadays, almost thirty years after the beginning of democratic reforms in Ukraine, it can be argued that the perception of democracy as an opportunity to make decisions by majority and to guarantee the observation of cultural, ethnic, religious and other rights of minorities to protect their own interests in political life is becoming more visible in Ukrainian society. There is a growing awareness among Ukrainians that the

²⁵ M. Weber, *Wirtschaft und Gesellschaft*, Tübingen 1921, p. 8.

²⁶ A. Birou, *Vocabulaire pratique des sciences sociales*, Paris 1966, p. 210.

²⁷ T. Parsons, *The system of modern societies*, Englewood Cliffs, NJ: Prentice-Hall 1971, p. 31.

²⁸ A. Jamróz, *Demokracja współczesna*. Introduction, Białystok 1993, p. 152.

neglect of minority rights poses a threat to the tyranny of the majority, resulting in very dangerous social issues.

So, the democratization of Ukraine is a reflection of European trends. At the same time, as V. Barabash notes, “despite the full volume of the provision of Art. 5 of the Constitution of Ukraine, the real mechanisms of democracy are far from ideal”²⁹. The peculiarities of democracy-building in Ukraine include:

- a significant delay in implementation or, in some cases, the absence of economic reforms in Ukraine;
- division of Ukrainian society on ideological, ethnic, linguistic and religious grounds, as well as division on the integration direction of the state development;
- the need to solve these problems for the further development of the state causes additional drama of the socio-political situation in the country, which resulted in the “Maidans” of 2004 and 2013-2014;
- the growing apolitical nature of youth who do not believe in the possibility of socio-political change in Ukraine and travel abroad for permanent residence;
- constant misunderstandings and quarrels in the environment of the so-called political elite of the state, even in the environment of political allies;
- the lack of effective forms of control over the activities of the authorities and, in some cases, the passive role of people as observers and no active participants in socio-political changes in the state.

Undoubtedly, the present underlying problems of Ukraine are the significant period of statelessness and, in fact, the total destruction of the national elite, which took place over three hundred years of Ukraine’s existence within the Russian and later Soviet Empires.

It is important in the context of the implementation of the European dimension of the Ukrainian Constitution to adhere to the principle of political pluralism, that is, the possibility of direct democracy in various forms (elections, referendum, *etc.*), legal activities of existing political parties, except forbidden ones by the Constitution and laws, as well as the creation of various political parties and civil organizations, and participation in their activities. According to Art. 36 of the Constitution of Ukraine, citizens of Ukraine have the right to freedom of association in political parties and civil organizations for the performing and protecting of their rights and freedoms to satisfy political, economic, social, cultural and other interests, except for restrictions established by law in the interests of national security and public order, public health, or protection of the rights and freedoms of

²⁹ Ю. Барабаш, *Конституційний вимір української демократії (історико-теоретичні нотатки)*. Право України. –2014. – № 7. – С. 140.

others³⁰. Political parties in Ukraine contribute to the formation and expression of the political willing of citizens and participation in elections³¹. Ukrainian law establishes a significant number of restrictions on the functioning of the right to freedom of association in political parties. However, when comparing the list of such restrictions with the restrictions defined in the Constitutions and legislation of other countries, we can conclude that the Ukrainian legislation is not overly “restrictive”. In particular, comparing the restrictions on the functioning of the right to freedom of association in political parties established by the legislation of Ukraine and Poland, we can conclude that the Constitution of the Republic of Poland provides a wider scope of restrictions than the Constitution of Ukraine³². It should be noted that these restrictions are more specific than in the Ukrainian Basic Law. In addition, the Constitution of the Republic of Poland introduced such restrictions, which appeared in Ukrainian legislation only in April 2015. It is about banning the existence of political parties and other organizations, which in their programs call for totalitarian methods and practices of Nazism, fascism and communism. In Ukraine, there has been a long-running debate over the need to create an institution with powers similar to those of the National Memory Institute in Poland. In November 2005, President of Ukraine Viktor Yushchenko signed a decree establishing the National Memory Institute, but it is rather a scientific research institution and does not have such powers as the NMI in Poland. In particular, employees of the Institute are not allowed to carry out investigations, or, for example, at the request of the Supreme Council of Ukraine, to lustrate the candidates who apply for high public positions. There was no lustration law in Ukraine at all, and representatives of the majority of Ukrainian political forces opposed the adoption of such a law. As for the Communist Party of Ukraine, until its recently activities were not only banned, but also representatives of this political party claimed that the party was illegally deprived of property belonging to it as the heirs of the Communist Party of the Soviet Union. Deputies of the Pan-Ukrainian Union “Freedom” O. Tyahnybok and A. Mokchnyk drafted law “On the Prohibition of Communist Ideology in Ukraine” registered on 4 November 2013 in the Supreme Council of Ukraine that caused the hot socio-political discussion. Art. 1 of this project provided that “the Communist Party of Ukraine, as a territorial organization of the CPSU, which throughout its history has been called the RSDLP (b), the RCP (b) and the CPSU (b), is recognized as a criminal organization that has committed crimes against the peace and security of mankind,

³⁰ Конституція України // ВВР України. – 1996. – № 30. – Ст. 141.

³¹ Конституція України // ВВР України. – 1996. – № 30. – Ст. 141.

³² Про політичні партії в Україні : Закон України № 2365-III від 5.04.2001 р. // ВВР України. – 2001. – № 23 – Ст. 118.

crimes and genocide”³³. At that time, the adoption of such a law by the Ukrainian Parliament was impossible. After the elections to the Ukrainian Parliament on October 28, 2012, in the nationwide multi-mandate constituency, 13.18% of voters, which is 2 687 269 citizens of Ukraine, voted for the representatives of the Communist Party of Ukraine³⁴. At the same time, 10.44% of voters voted for the representatives of the political party of the All-Ukrainian Association “Freedom”, which made 2 129 933 citizens of Ukraine. After the Revolution of Dignity, then-Chairman of the Supreme Council of Ukraine, Oleksandr Turchynov, in May 2014, addressed a written request to the Ministry of Justice of Ukraine to study the issue of involvement of the Communist Party in actions aimed at violating the sovereignty and territorial integrity of the state, undermining state power and taking without delay, as it was prescribed in law, measures to ban the Communist Party of Ukraine³⁵. However, at that time it was not possible to ban the activities of the Communist Party of Ukraine. The situation changed only after the snap elections of the Deputies of Ukraine, which took place on October 26, 2014. For the first time in the period of Ukrainian independence, the Communist Party of Ukraine did not overcome the electoral threshold and ceased to be a parliamentary party. The active participation of representatives of this political force in the advocacy of separatism in Ukraine, in particular participation in organizing mass anti-Ukrainian events, which called for a violent change of the constitutional order, seizure of state power, change of territorial integrity of Ukraine, became an additional reason for banning its activity in Ukraine. According to Art. 2 of the Law of Ukraine “On Condemnation of Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propagation of Their Symbolism” of April 9, 2015, the communist totalitarian regime of 1917–1991 in Ukraine is recognized as a criminal and pursuing policy of state terror, which was characterized by numerous human rights abuses of massacres, executions, deaths, deportations, torture, the use of forced labour and other forms of mass physical terror, ethnic persecution, national, religious, political, class, social and other motives, infliction of moral and physical suffering when using psychiatric measures for political purposes, violation of freedom of conscience, thought, expression, freedom

³³ Лідери «Свободи» зареєстрували законопроект «Про заборону комуністичної ідеології в Україні» // [Електронний ресурс]. – Режим доступу: <http://www.old.svoboda.org.ua/diyalnist/povupny/043781/>.

³⁴ Вибори 2012. Відомості про підрахунок голосів виборців по загальнодержавному багатомандатному виборчому округу // [Електронний ресурс]. – Режим доступу: <http://www.cvk.gov.ua/pls/vnd2012/wr300?PT001F01=900>.

³⁵ У листі до Мініюсту Турчинов детально розписав про сепаратистські дії комуністів // [Електронний ресурс]. – Режим доступу: <http://tsn.ua/politika/u-listi-do-minyustu-turchinov-detavno-rozpisav-pro-separatistski-diyi-komunistiv-350249.html>.

of the press and lack of political pluralism, and in connection it is condemned as incompatible with the fundamental rights and freedoms of a person and a citizen³⁶. In this case, the Ukrainian Parliament in Art. 3 of the mentioned above laws established that political parties, regional, city, district organizations or other structural entities, provided by the statute of a political party, in respect of which the central body of executive power implementing state policy on state registration of legal entities, registration (legalization) of associations of citizens, civil unions, other public formations, in accordance with the procedure determined by the Cabinet of Ministers of Ukraine on the discrepancy of their activity, name and/or symbols to the requirements of this Law, cannot be the subject of the election process³⁷. Therefore, the Communist Party of Ukraine will not be able to participate in any elections in Ukraine. However, if the name of this political force and its symbolism is changed, such opportunity will certainly exist.

Conclusions

Speaking about the importance of democratic principles and the internal political context of exercising citizens' constitutional rights in Ukraine, the foreign policy context of the constitutional process is worth of particular attention. After all, the establishment of a democratic system of state, power of people and self-government in one's own territory is impossible nowadays without determining the place of the state in the world community. What is revealing here is the definition of a state as a sovereign independent European state, which is stated in the preamble to the Basic Law, in which the Supreme Council states, "strengthening civil consent on the land of Ukraine and affirming the European identity of the Ukrainians and the irreversibility of the European and Euro-Atlantic integration of Ukraine"³⁸. Moreover, Art. 18 of the Constitution establishes that "Ukraine's foreign policy is aimed at safeguarding its national interests and security by maintaining peaceful and mutually beneficial cooperation with members of the international community in accordance with generally recognized principles and rules of international law"³⁹. Therefore, the practical activity of Ukraine's foreign policy institutions is carried out

³⁶ Про засудження комуністичного та націонал-соціалістичного (нацистського) тоталітарних режимів в Україні та заборону пропаганди їхньої символіки : Закон України № 317-VIII від 9.04.2015 р. // ВВР України. – 2015. – № 26. – Ст. 219.

³⁷ Про засудження комуністичного та націонал-соціалістичного (нацистського) тоталітарних режимів в Україні та заборону пропаганди їхньої символіки : Закон України № 317-VIII від 9.04.2015 р. // ВВР України. – 2015. – № 26. – Ст. 219.

³⁸ Конституція України. – Електронний ресурс – Режим доступу: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

³⁹ Конституція України. – Електронний ресурс – Режим доступу: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

within the framework of established international legal principles. Finally, European and Euro-Atlantic integration has become one of the main policy priorities in the international arena, as reflected in the Constitution of the country, as evidence of Ukraine's inevitability from European identity and civilization space. The need for a constitutional fixing of the course for European and Euro-Atlantic integration was conditioned by a number of internal political circumstances and the "desire" of certain political forces to revise Ukraine's foreign and, therefore, geopolitical, aspirations. A series of decisions by the Ukrainian Parliament aimed at revoking Ukraine's non-aligned status and aligning Ukrainian legislation with European standards opens the way to deepening integration processes with both the EU and the North Atlantic Treaty Organization⁴⁰. In particular, defining the powers of the Supreme Council of Ukraine, Art. 85, par. 5 of the Constitution establishes among the powers of the Supreme Council, "the determination of the principles of internal and foreign policy, the implementation of the strategic course of the state for the acquisition of full membership of Ukraine in the European Union and in the Organization of the North Atlantic Treaty"⁴¹. Therefore, the analysis of the practical implementation of Ukraine's foreign policy priorities confirms its pro-European involvement in various spheres of cooperation. However, this applies both to the development of cooperation within the framework of both European regional multilateral cooperation institutes and sectoral (sectoral) cooperation within the framework of various international organizations⁴². In this context, it is necessary to note the growing dynamics of Ukraine's approximation to the European standards of governance and the deepened dialogue in the field of European integration through the Association Agreement between Ukraine and the European Union as well as the desire to deepen integration into Euro-Atlantic structures through the mechanisms of the Enhanced Atlantic Program.

To sum up, it can be argued that the system of constitutional law formation and mechanisms for the implementation of national law and realization of Ukraine's national interests has gone through a rather thorough historical process. Despite the lively discussions of scholars and experts in various fields of scientific and practical activity, the constitutional process in Ukraine has deep roots and is closely linked to the European civilization and has taken place in the traditions of the European

⁴⁰ Конституція України. – Електронний ресурс – Режим доступу: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

⁴¹ *Ibidem*.

⁴² See: O. Kuczyk, *Regionalna współpraca Ukrainy w ramach Organizacji Bezpieczeństwa i Współpracy w Europie w warunkach przemiany środowiska bezpieczeństwa w regionie Europy Środkowo-Wschodniej*, Wrocław: Wschodnioznawstwo 2017, pp. 365-374.; O. Кучик, *Україна в багатосторонньому міжнародному співробітництві // Зовнішня політика України – 2015: стратегічні оцінки, прогнози та пріоритети / За ред. Г.М. Перепелиці. – К.: ВД «Стилос», 2016. – С. 202–219.*

historical and civilization process, sometimes ahead of it. It is worth noting its multidimensionality and complexity through which Ukrainian statehood absorbed the best traditions of different civilizations because of its special geopolitical position on the political map of the world. Nevertheless, the constitutional documents of Ukraine, starting with the Constitution of P. Orlyk and ending with the current Constitution of Ukraine, comply with the modern traditions of constitutional law. Of course, with the development of social traditions and international political transformations, the constitutional process in Ukraine naturally needs constant attention both in the context of its intensification and adaptation to the norms of European constitutional law. It is relevant today to deepen research in the field of studying the constitutional documents of foreign countries in the context of disseminating and borrowing best practices in the implementation of modern norms and standards for the development of social processes in today's globalized world.

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The European Dimension of the Ukrainian Constitution

Summary: Nowadays the intensification of the processes of European integration of Ukraine sets a number of tasks of social, economic and political spheres for the authorities and institutions of civil society. In political and legal discourse, the discussion on the acquisition (achievement) of European standards by Ukraine for deepening the integration processes with the European Union and European regional institutes of multilateral sectoral cooperation is not ceased. Hence the urgent issue is Europeanity of public authorities functioning, governance and local self-government, as well as democratic values in the activities of institutions of civil society.

The affiliation of Ukrainian statehood to the European civilization is repeatedly raised by the questioning of some of the political authorities in Ukraine (mainly opponents of the European choice)

and representatives of the academic community who are debating the issue of belonging of the Ukrainian legislation to the European or Eurasian traditions.

With the development of social traditions and international political transformations, the constitutional process in Ukraine naturally needs constant attention both in the context of its intensification and adaptation to the norms of European constitutional law. It is relevant today to deepen research in the field of studying the constitutional documents of foreign countries in the context of disseminating and borrowing best practices in the implementation of modern norms and standards for the development of social processes in today's globalized world.

Keywords: democracy, European integration, European standards, human rights, identity, rule of law

Europejski wymiar Konstytucji Ukrainy

Streszczenie: W dzisiejszych czasach intensyfikacja procesów integracji europejskiej Ukrainy stawia przed władzami i instytucjami społeczeństwa obywatelskiego szereg zadań sfery społecznej, gospodarczej i politycznej. W dyskursie polityczno-prawnym nie ustaje dyskusja na temat uzyskiwania (osiągania) przez Ukrainę standardów europejskich dla pogłębiania procesów integracyjnych z Unią Europejską i europejskimi regionalnymi instytucjami wielostronnej współpracy sektorowej. Stąd pilną kwestią jest europejskość funkcjonowania władz publicznych, sprawowania rządów i samorządu terytorialnego oraz wartości demokratyczne w działaniach instytucji społeczeństwa obywatelskiego. Przynależność państwowości ukraińskiej do cywilizacji europejskiej jest wielokrotnie podnoszona w rozmowach z władzami na Ukrainie (głównie przeciwników europejskiego wyboru) oraz przedstawicieli środowiska akademickiego, którzy debatują nad kwestią przynależności ustawodawstwa ukraińskiego do tradycji europejskich lub też euroazjatyckich.

Wraz z rozwojem tradycji społecznych i międzynarodowymi przemianami ustrojowymi proces konstytucyjny na Ukrainie w naturalny sposób wymaga stałej uwagi zarówno w kontekście jego intensyfikacji, jak i dostosowania do norm europejskiego prawa konstytucyjnego. Istotne jest dziś pogłębianie badań w zakresie studiowania dokumentów konstytucyjnych obcych państw w kontekście upowszechniania i zapożyczania najlepszych praktyk w zakresie wdrażania nowoczesnych norm i standardów rozwoju procesów społecznych w dzisiejszym zglobalizowanym świecie.

Słowa kluczowe: integracja europejska, standardy europejskie, tożsamość, prawa człowieka, demokracja, praworządność